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**MAILED**

**JUN 09 2010**

**OFFICE OF PETITIONS**

In re Application of :  
Ogle et al. :  
Application Number: 09/591266 : DECISION ON PETITION  
Filing Date: 06/09/2000 :  
Attorney Docket Number: 0180221 :  
:

This is a decision on the petition filed on March 18, 2010, under 37 CFR 1.137(b),<sup>1</sup> to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on December 4, 2009, for failure to timely file a proper response to the final Office action mailed on August 3, 2009, which set a three (3) month shortened statutory period for reply. On November 25, 2009, an amendment after final rejection was filed, accompanied by a one (1)-month extension of time in accordance with 37 CFR 1.136(a). On December 30, 2009, however, the Office mailed an Advisory Action

<sup>1</sup> Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Before the Filing of an Appeal Brief, stating that the reply fails to place the application in condition for allowance. Notice of Abandonment was mailed on February 17, 2010.

**The Notice of Appeal filed March 18, 2010, has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, accompanied by the fee required by law, runs from the date of this decision.**

This application is being referred to Technology Center Art Unit 2893 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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Office of Petitions